

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:20-CV-00558-M

MICHAEL SHANE TOW,

Plaintiff,

v.

KILOLO KIJAKAZI,¹

Acting Commissioner of Social Security,

Defendant.

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ORDER

This matter is before the court on Plaintiff's Motion for Judgment on the Pleadings and Defendant's unopposed Motion to Remand to the Social Security Administration for further fact-finding. [DE-26, DE-30]. Plaintiff's counsel has consented to the Defendant's Motion to Remand.


On October 22, 2020, Plaintiff filed a Complaint in this Court requesting review of the Commissioner's final determination that he was not disabled within the meaning of the Social Security Act. [DE-5]. Defendant filed an answer to the Complaint. [DE-15]. Plaintiff filed a motion for judgment on the pleadings. [DE-26]. After further review, the Defendant asks this court to remand the case to the Commissioner for further administrative proceedings.

¹ As of July 9, 2021, Kilolo Kijakazi became the Acting Commissioner of Social Security and is automatically substituted as a party pursuant to Fed. R. Civ. P. 25(d). See also section 205(g) of the Social Security Act, 42 USC 405(g) (action survives regardless of any change in the person occupying the office of Commissioner of Social Security).

Under sentence four of 42 U.S.C. § 405(g), the district court has the authority to remand a case to the Commissioner of Social Security for further fact finding. 42 U.S.C. § 405(g); *Sullivan v. Finkelstein*, 496 U.S. 617, 624–25 (1990). Sentence four of § 405(g) states “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g).

Pursuant to sentence four of § 405(g), to enable further administrative fact finding and upon consent of the parties, this court REVERSES the decision of the Commissioner of Social Security and REMANDS the case to the Commissioner for further proceedings.

SO ORDERED this 3^d day of November, 2021.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE